

LITIGATION ROSTER

PROPERTY TAX

JUNE 2012

**Property Tax  
JUNE 2012**

**NEW CASES**

Case Name

Court/Case Number

None

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**CLOSED CASES**

Case Name

Court/Case Number

None

Please refer to the case roster for more detail regarding new and closed cases

**PROPERTY TAX**  
**LITIGATION ROSTER**  
**JUNE 2012**

**BENNETT, STEPHEN H. v. California State Board of Equalization**

Court of Appeal, Third Appellate District, Case No. C070263  
Sacramento Superior Court Case No. 34-2011-80000911

Filed – 07/08/11

*Plaintiff's Counsel*

Stephen Bennett  
In Pro Per

*BOE's Counsel*

Jane O'Donnell  
*BOE Attorney*  
Wendy Vierra

Issue(s): Whether BOE violated [Government Code section 15606\(h\)](#), and [15608](#) for failing to bring judicial action against assessors for retroactively applying Part 0.5 of the California Revenue and Taxation Code and improperly instructing assessors to apply Part 0.5 of the CA Revenue and Taxation Code retroactively.

Audit/Tax Period: 2004-2008

Amount: Unspecified

Status: Plaintiff filed a Verified Petition for Writ of Mandate on July 8, 2011. BOE was properly served on August 10, 2011. BOE filed its Demurrer to Petitioner's Petition for Writ of Mandate on September 9, 2011. A hearing is set for November 18, 2011 on the petitioner's Motion to Disqualify the Attorney General from representing the BOE and BOE's Demurrer. At the December 9, 2011 hearing, the Court denied petitioner's Motion to Disqualify the Attorney General. The Court also denied the petitioners' Request for Clarification of the ruling on December 21, 2011. On January 18, 2012, the Court sustained SBE's Demurrer to Petitioner's Petition for Writ of Mandate and denied Petitioner's Motion to Disqualify the Attorney General's Office.

Court of Appeal: Petitioner filed a Notice of Appeal of these order on January 25, 2012. Appellant filed his opening brief on June 16, 2012. SBE's response brief is due July 13, 2012.

**CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM, et al. v. County of Los Angeles**

Court of Appeal, Second Appellate District: B225245  
Los Angeles County Superior Court: BC389742  
(*Amicus Curiae Brief*)

*Plaintiff's Counsel*

Kevin J. Moore  
Moore & Associates

*BOE's Counsel*

Lisa W. Chao  
*BOE's Attorney*  
Kiren Chohan

Issue(s): This appeal involves the assessment of a taxable possessory interest, a leasehold, in tax exempt publicly owned real property. Whether [Government Code section 7510, subdivision \(b\)\(1\)](#) fails to tax a lessee's taxable possessory interest in accordance with the possessory interest's fair market value so as to render the statute's valuation methodology unconstitutional.

Status: The superior court granted defendant LA County's motion for summary judgment, and plaintiff CalSTRS has appealed.

Court of Appeal: The Court of Appeal has asked the SBE to submit an amicus brief.

**ELK HILLS POWER, LLC v. California State Board of Equalization, et al.**

San Diego Superior Court Case No. 37-2008-00097074-CU-MC-CTL

Filed – 12/01/08

Court of Appeal, Fourth Appellate District Case No. D056943

California Supreme Court Case No. S194121

*Plaintiff's Counsel*

Peter W. Michaels

Law Offices of Peter Michaels

*BOE's Counsel*

Tim Nader

*BOE Attorney*

Kiren Chohan

Issue(s): Whether SBE properly included the assumed costs of emissions reductions credits (ERCs) when valuing plaintiff's property under [Revenue and Taxation Code Section 110](#).

Audit/Tax Period: 2004-2008Amount: Unspecified

Status: The trial court ordered summary judgment in favor of SBE. The Court of Appeal issued a published decision on May 10, 2011, affirming the trial court judgment and awarding SBE its costs on appeal. Elk Hills filed a Petition for Rehearing on May 25, 2011. On June 7, 2011, the Court denied Elk Hills' Petition for Rehearing. On June 20, 2011, Elk Hills Power filed a Petition for Review with the California Supreme Court. On July 7, 2011, CalTax submitted a Request for Depublication of the Court of Appeal Opinion with the California Supreme Court. SBE's Answer to Elk Hills' Petition for Review was filed July 11, 2011. SBE's Opposition to CalTax's Request for Depublication was filed on July 18, 2011.

Supreme Court: The Supreme Court of California accepted the petition for review filed by Elk Hills Power, LLC on August 24, 2011. The case is currently being briefed in the Supreme Court.

**NETJETS AVIATION, INC., et al. v. WEBSTER GUILLORY, in his capacity as Tax Assessor for the County of Orange, CA***(Amicus Curiae Brief)*

Court of Appeal, Fourth Appellate District: G044970

Filed – 9/24/2010

Orange County Superior Court: 30-2008-00107805 (Lead)

*BOE's Counsel*

Court of Appeal, Fourth Appellate District: G044980

None

*BOE Attorney*

Kiren Chohan

Issue(s): This action (between Santa Barbara and Orange counties and industry to which the SBE was not a party (facially challenges the fractionally owned aircraft taxation statutes that were adopted on August 24, 2007, and became effective on January 1, 2008 under Senate Bill 87. (Stats. 2007, ch. 180 ("SB87").) SB 87 added Article 7, entitled "Fractionally Owned Aircraft," to the Revenue and Taxation Code ("TC", commencing with RTC section 1160. ([Rev. & Tax. Code, §§ 1160 et seq.](#))).

Audit/Tax Period: NoneAmount: Unspecified

Status: Trial Court: On June 18, 2010, the Board approved the filing of an amicus brief. BOE's Application for Leave to File Amicus Brief was filed on September 24, 2010. On November 20, 2010, the trial court entered a ruling in favor of petitioners, finding that SB 87 was unconstitutional and unlawful.

Court of Appeal: BOE'S Amicus Brief was filed with the court on February 17, 2012. Oral arguments were held on April 17, 2012. On June 21, 2012, the court reversed the judgment and directed the trial court to enter judgments that, 1) the tax on fractionally owned aircraft as assessed by the Legislature is constitutional; and 2) the retroactive application of a wholly new tax assessment for time periods before the 2007-2008 fiscal year is unconstitutional.

**NONPROFITS INSURANCE ALLIANCE OF CALIFORNIA; ALLIANCE MEMBER SERVICES, INC. v. County of Santa Cruz; State Board of Equalization, DOES 1-10**

Santa Cruz County Superior Court: CV173140

Plaintiff's Counsel

Peter O. Glaessner

Lombardi, Loper & Conant

Filed – 5/23/2012

BOE's Counsel

David Lew

BOE Attorney

Crystal Yu

Issue(s): The issue in this case is whether plaintiffs are entitled to Welfare Organizational Exemptions and Organizational Clearance Certificates (OCC) under [Revenue and Taxation Code section 214\(a\)](#) and [Revenue and Taxation Code section 254.6](#). Plaintiffs are seeking a refund of property taxes from the county, and from SBE, declaratory relief and an order compelling issuance of the OCCs.

Audit/Tax Period:

Amount: \$410,673.38

Status: Nonprofits Insurance Alliance of California served the SBE with a First Amended Complaint to Recover Taxes Levied Against Tax-Exempt Welfare Organizations; Declaratory Relief and to Compel Issuance of Organizational Clearance Certificates Per Revenue and Taxation Code § 254.6.

**SANTA BARBARA, Assessor for the County of v. Assessment Appeals Board No. 1**

Court of Appeal, Second Appellate District: B229656

Santa Barbara County Superior Court: 01244457

(Amicus Curiae Brief)

BOE's Counsel

Stephen Lew

BOE Attorney

Kiren Chohan

Issue(s): The primary issue in the case is the proper valuation of transfers of individual ownership interests in resident-owned mobile home parks. ([Revenue and Taxation Code section 62.1](#)) On April 26, 2011, the Board approved the filing of an amicus brief in this case to support the appellant Santa Barbara County Assessor's position for the purpose of uniformity and to support those assessors that are following BOE's guidance regarding this issue.

Audit/Tax Period: None

Amount: Unspecified

Status: Pending. Appellant County Assessor for Santa Barbara filed Reply Brief on September 29, 2011. The SBE's application to file an amicus curiae brief in support of Appellant County of Santa Barbara was granted by the Court of Appeal on October 17, 2011. Oral argument was held on February 8, 2012. On May 16, 2012, the Court issued a published decision upholding the trial court's decision in favor of Respondents. Appellant's Petition for Rehearing, filed on May 30, 2012, was granted by the Court on June 13, 2012.

**SPRINT TELEPHONY PCS, L.P. v. State Board of Equalization, et al.**

San Francisco Superior Court Case No. CGC-11-511398  
Court of Appeal, First Appellate District, Case No. A134533  
Plaintiff's Counsel  
Richard N. Wiley  
Law Offices of Richard Wiley

Filed – 06/01/11  
BOE's Counsel  
David Lew  
BOE Attorney  
Kiren Chohan

Issue(s): The issue in this case is whether plaintiff's 2008 Board-adopted unitary value of \$2,039,700,000 is overstated. ([California Constitution, Art. XIII, section 19](#)); ([Revenue and Taxation Code section 5148](#)).

Audit/Tax Period: 2008

Amount: \$9,000,000.00

Status: Sprint PCS served the Board with a First Amended Verified Complaint dated June 23, 2011. Hearing on Defendant-Counties Demurrers took place on October 20, 2011. On December 27, 2011, the Court overruled each of the three demurrers filed by the county defendants. On January 17, 2012, the Court granted the Counties Ex Parte Application for Stay of Proceedings if the Counties file a Writ of Mandate with Court of Appeal which was filed on February 10, 2012.

Court of Appeal: Upon receipt of Sprint's filing its Opposition to the Petition, the Court had directed the county defendants to file a reply to Sprint's Opposition by March 13, 2012. County Defendant's Petition was denied. Case is returning to the trial court.

**JOAN THAYER, IN HER CAPACITY AS MARIN COUNTY ASSESSOR v. Assessment Appeals Board No. 1**

(*Amicus Curiae Brief*)

Court of Appeal, First Appellate District: A134340

Filed – 5/30/2012  
BOE's Counsel  
None  
BOE Attorney  
Kiren Chohan

Issue(s): This issue involves whether an "other than original transferor" can avoid a change in ownership when he severs his joint tenancy in favor of a tenancy in common. The superior court found the severance in question was a non-assessable event pursuant to [Revenue and Taxation Code section 62\(a\)](#). The superior court's interpretation is inconsistent with the SBE's longstanding advice regarding the proper assessment of joint tenancies. The Marin County Assessor filed an appeal and has asked the SBE to file an amicus brief in support of its position.

Audit/Tax Period: None

Amount: Unspecified

Status: Court of Appeal: SBE will file an amicus brief in support of Appellant Marin County Assessor.

**VERIZON CALIFORNIA INC. v. California State Board of Equalization**

Sacramento Superior Court Case No. 34-2011-00116029

Plaintiff's Counsel  
Peter W. Michaels  
Law Offices of Peter Michaels

Filed – 12/21/11  
BOE's Counsel  
Jill Bowers  
BOE Attorney  
Kiren Chohan

Issue(s): The issue in this case is whether plaintiff's 2007 Board-adopted unitary value of \$3,480,700,000 is overstated. ([California Constitution, Art. XIII, section 19](#)); ([Revenue and Taxation Code section 5148](#)).

Audit/Tax Period: 2007

Amount: \$5,900,000.00

Status: Verizon served the Board with a Verified Complaint for Refund of State Assessed Property Taxes dated December 22, 2011. The Board's response to Verizon's First Amended complaint is due September 6, 2012.

**WESTERN STATES PETROLEUM ASSOCIATION v. California State Board of Equalization**

Los Angeles County Superior Court Case No. BC403167

Filed – 12/03/08

Court of Appeal, Second Appellate District No. B225932

California Supreme Court, Case No. S200475

Plaintiff's Counsel

Cris K. O'Neill

Cahill, Davis & O'Neill, LLP

BOE's Counsel

Brian Wesley

BOE Attorney

Kiren Chohan

Issue(s): Whether BOE's Property Tax Rule 474 is valid ([Government Code section 11340](#) et seq.; [Revenue and Taxation Code section 51](#); [Government Code section 15606](#); Title 18 California Code of Regulations, sections 461 and 324; [California Constitution Article III, section 1](#); and [Article XIII A sections 1, 2, and 3](#).)

Audit/Tax Period: None

Amount: Unspecified

Status: On March 29, 2010, the court issued its Order on Submitted Matter denying SBE's Motion for Summary Judgment and granting summary judgment to WSPA. Judgment in favor of plaintiff was entered April 27, 2010. SBE's Appellant's Reply Brief was filed on August 12, 2011. The case has been fully briefed, and oral argument was held on November 21, 2011. On January 19, 2012, the Court of Appeal declared Rule 474 to be invalid.

Supreme Court: SBE's Petition for Review with the Supreme Court was filed on February 28, 2012. On May 16, 2012, the Supreme Court granted SBE's Petition for Review of the Court of Appeal decision.

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JUNE 2012**

NONE

**DISCLAIMER**

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